

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2009-0014-EXEC

In the Matter of the Petition for Reconsideration of

IRISH BEACH WATER DISTRICT
Permit 15580 (Application 21902)

Regarding Order Denying Extension of Time

SOURCE: Irish Gulch tributary to Pacific Ocean

COUNTY: Mendocino

ORDER DENYING RECONSIDERATION

BY THE EXECUTIVE DIRECTOR:

1.0 INTRODUCTION

Irish Beach Water District (Petitioner) petitions the State Water Resources Control Board (State Water Board or Board) for reconsideration of the Division of Water Rights' (Division) order denying a petition for extension of time to put water to beneficial use under Permit 15580 (Application 21902). The Executive Director finds that denial of the extension was appropriate and proper, and thus denies the petition for reconsideration. (Cal. Code Regs., tit. 23, § 770.)¹

2.0 RECONSIDERATION OF A DECISION OR ORDER

Any interested person may petition the State Water Board for reconsideration of a decision or order on any of the following grounds:

¹ The Water Code directs the State Water Board to act on a petition for reconsideration within 90 days from the date on which the State Water Board adopts the decision or order that is the subject of the petition. (Wat. Code, § 1122.) If the State Water Board fails to act within that 90-day period, a petitioner may seek judicial review, but the State Water Board is not divested of jurisdiction to act upon the petition simply because the State Water Board failed to complete its review of the petition on time. (See *California Correctional Peace Officers Ass'n. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1147-1148, 1150-1151 [43 Cal.Rptr.2d 681]; State Water Board Order WQ 98-05-UST at pp.3-4.)

- (a) [i]rregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- (b) [t]he decision or order is not supported by substantial evidence;
- (c) [t]here is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- (d) [e]rror in law.

(Cal. Code Regs., tit. 23, § 768.)

The State Water Board may refuse to reconsider a decision or order if the petition for reconsideration fails to raise substantial issues related to the causes for reconsideration set forth in section 768 of the State Water Board's regulations. (*Id.*, § 770, subd. (a)(1).)

Alternatively, after review of the record, the State Water Board also may deny the petition upon a finding that the decision or order was appropriate and proper, set aside or modify the decision or order, or take other appropriate action. (*Id.*, subd. (a)(2)(A)-(C).)

State Water Board Resolution 2002-0104 delegates to the Executive Director the authority to supervise the activities of the State Water Board. Unless a petition for reconsideration raises matters that the State Water Board wishes to address or requires an evidentiary hearing before the State Water Board, the Executive Director's consideration of a petition for reconsideration falls within the scope of the authority delegated under Resolution 2002-0104. Accordingly, the Executive Director has the authority to refuse to reconsider a petition for reconsideration, deny the petition, set aside or modify the decision or order, or take other appropriate action.

The State Water Board has not designated decisions by the Executive Director as precedent decisions pursuant to the Administrative Procedures Act. (State Water Board Order WR 96-1, at p. 17, fn. 11.)

3.0 FACTUAL BACKGROUND

The Division issued Permit 15580 to Gertrude J. Moores, Jesse E. Nichols, and the Estate of Williams M. Moores on February 15, 1968, pursuant to Application 21902. On March 20, 1969, the permit was amended to list Irish Beach Water District as an additional Permittee. The permit was subsequently assigned solely to the Irish Beach Water District on March 21, 1973. The permit authorizes direct diversion of 1.31 cubic feet per second (cfs) for municipal,

domestic, and irrigation purposes. The Permit required completion of construction work by December 1, 1970 and full beneficial use of water by December 1, 1971.

At the request of Petitioner, on July 27, 1973, the Division extended the time to complete construction to December 1, 1975 and the time to put water to full beneficial use until December 1, 1976. The same order also established a maximum annual diversion limit of 545 acre-feet per annum (afa). The Division granted a second time extension at the request of Petitioner, extending the time to complete construction to December 1, 1978 and the time to put water to full beneficial use to 1987. At the same time, the Division added a second point of diversion to the permit. On October 17, 1988, the Division inspected the project and found that Petitioner was using 0.05 cfs, with a maximum use of 23 afa. The Division granted Petitioner a third time extension in 1989. Construction was to be completed by December 31, 1995; water was to be put to full beneficial use by December 31, 1997.

Following expiration of the 1997 deadline for putting water to full beneficial use, the Division conducted a licensing inspection on May 25, 1999. The inspection found that 167 of the 450 homes planned for the development had been built. Progress reports indicated maximum use to be 0.05 cfs, and the maximum diversion to be 24.1 afa. On July 28, 2000, two and one-half years after time expired under the permit, Petitioner requested a fourth extension of time. The petition indicated that it was unknown when water would be fully used, but requested a ten-year extension (i.e., until December 31, 2007).

On March 15, 2007, less than a year before the requested ten-year extension period was to expire, and following numerous requests from the Division to complete documentation under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.), Petitioner issued a Notice of Determination (NOD) for the time extension environmental document.

On July 22, 2008, the Division denied Petitioner's request for extension of time. The denial was based on a number of factors, the first of which was that the Division could not make a finding of due diligence. At the time the last extension ran out, 28 years had elapsed since issuance of the original permit. At the time of the denial, over 39 years had elapsed. As of 2007, when the extension would have expired, all water had not been put to beneficial use. The Division also noted the long delay, despite prodding by the Division, in completion of CEQA documentation

for the extension. The Division also found that the delay was not occasioned by obstacles that could not be reasonably avoided. The reason given by Petitioner was that only 5 houses per year were being developed. The Division further found that the Mitigated Negative Declaration showed insufficient summer flow to complete the project. The Mitigated Negative Declaration also identified threatened and endangered species and their habitat that could be affected by the project. The extension denial order expressed concern over the State Water Board's public trust duty to protect these species, including the California Red-Legged Frog, the Point Arena Mountain Beaver, Steelhead, and Coho Salmon.

Finally, the Division found that satisfactory progress was not likely to be made if an extension were granted. Petitioner had stated that the project would not be completed during the requested extension. In fact, the contemplated extension period had nearly expired before Petitioner finished CEQA documentation necessary for consideration of the extension. In addition, the Petitioner had made little progress towards reaching full beneficial use. The denial noted that environmental documentation estimated that full beneficial use would not occur until sometime between 2038 and 2067.

On August 19, 2008, the State Water Board received a petition for reconsideration and a request that the extension be extended further, to 2018. Petitioner also requested that the State Water Board hold a hearing on evidence relating to impacts on threatened and endangered species and delays with the development due to financial trouble associated with litigation concerning another water right.

4.0 DISCUSSION²

4.1 Requirements for Obtaining an Extension

The State Water Board may extend the deadlines specified in a permit for beginning construction, completing construction, and completing application of water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) The State Water Board will grant a petition for an extension of time only upon such conditions as the Board determines to be in the public interest, and only upon a showing that (1) due diligence has been exercised, (2) failure to comply with previous time requirements was caused by obstacles which could not reasonably

² To the extent Petitioner raises issues not discussed in this order, those issues are dismissed as not substantial or appropriate for review. (Cal. Code Regs., tit. 23, § 770, subd. (b)(1).)

be avoided, and (3) satisfactory progress will be made if an extension is granted. (Cal. Code Regs., tit. 23, § 844.) "Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not the enterprise will not generally be accepted as good cause for delay." (*Ibid*; State Water Board Order WRO 2003-0003 [lack of time and money were not valid excuses for failure to diligently pursue a project].) Approval of a petition for an extension of time is a discretionary act that is subject to the requirements of CEQA. (State Water Board Order WR 2008-0045 at p. 4.)

4.2 Due Diligence

The due diligence requirement is an important aspect of water right administration. As a recent State Water Board order explains:

The Water Code and the State Water Board's regulations require appropriative water rights to be developed with due diligence. The purpose of the due diligence requirement is to ensure that appropriators do not hold water rights in "cold storage," thereby preventing water resources from being put to beneficial use. (See *California Trout Inc. v. State Water Resources Control Board* (1989) 207 Cal.App.3d 585, 619 [discussing Water Rights Board's regulations and the fact that "the statutory requirement of diligence does not allow the Water Board to countenance a scheme placing water rights in 'cold storage' for future use"]; see also State Conservation Commission, Report of the Conservation Commission of the State of California to the Governor and Legislature of California (1913) pp. 20-21, 39-40 [not sound public policy to allow cold storage of a valuable natural resource such as water]; and see *Nevada County and Sacramento Canal Company v. G. W. Kidd* (1869) 37 Cal. 282, 314 ["The doctrine is that no man shall act upon the principle of the dog in the manger, by claiming water by certain preliminary acts, and from that moment prevent others from enjoying that which he is himself unable or unwilling to enjoy, and thereby prevent the development of the resources of the country by others"].) (State Water Board Order WR 2008-0045 at p. 2.)

Petitioner argues that it has exercised due diligence because all construction has been completed and full beneficial use of water is nearly complete. But Petitioner goes on to state that only 195 of 502 homes have been built. (Petition, p. 6-7.) This represents only a 39% build-out. Petitioner further notes as evidence of diligence that the lots have been subdivided and fully permitted for development. (Petition, p. 7.) Demonstrating that the lots are ready for homes does not necessarily show diligence, however, especially considering that over a nearly 40 year period the homes have not been built and the water has not been put to beneficial use. Petitioner asserts that "future growth is not merely a gleam in the developer's eye – rather, it is just a matter of time before all approved lots are built." (Petition, p. 7.) However, considering

that the permit was issued in 1968 and that according to the Mitigated Negative Declaration an additional thirty to sixty years may be required to put the water to full beneficial use, the amount of time is not consistent with the requirement for due diligence.

Petitioner also challenges the finding that due diligence was not exercised because Petitioner was slow to complete CEQA documentation. This challenge is based on the assertion that Petitioner's slow completion of CEQA was because of Petitioner's "misunderstanding as to how to proceed with the CEQA documentation and the fact that small public agencies are not always capable of responding quickly due to a variety of factors." (Petition, p. 11.) While this may be true, State Water Board regulations make clear that "conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay." Petitioner's multi-year delay argues against an assertion that satisfactory progress will be made or that due diligence has been exercised. Thus by the terms of the State Water Board's regulations, it would be improper to consider Petitioner's failure to retain a CEQA consultant as a valid excuse for delay.

4.3 Failure to Comply with Past Time Requirements

Petitioner asserts that the reasons previous timelines were not met was the slow rate of development along the Mendocino coast and the onerous regulatory process and hurdles to developing large residential subdivisions in the area. In the words of the Petitioner, development of a subdivision on the Mendocino coast, "even back in the 1980's – is a very complex, expensive, and time consuming undertaking." (Petition, p. 7.) Petitioner fails to note, however, that 1980 was nearly 30 years ago. Even in the relatively slow-moving worlds of coastal development and water regulation, three decades is a substantial amount of time. Petitioner also does not elaborate on how regulatory processes delayed the construction of homes in this particular subdivision or appropriation of water under this particular permit.

Petitioner also argues that past failure to comply with time requirements was caused by litigation over a different water right held by Petitioner. Petitioner does not explain how lack of access to water under another right caused it to delay development under this permit. If anything, one would expect that lack of access to water under another right would speed development under this permit. Further, a lack of finances caused by separate litigation, as claimed by Petitioner, does not supply a valid reason for delay, even if such lack of finances caused a slowdown in development. (Cal. Code Regs., tit. 23, § 844.)

4.4 Likelihood of Satisfactory Progress if an Extension is Granted

Although first noting that it is hard to project future growth within a subdivision, Petitioner claims in its reconsideration request that all the water will be put to beneficial use within ten years. This is based on an expected growth of five new homes per year, which is in line with past and current development rates. Petitioner suggests in the petition for reconsideration that it only intends to service 53 more homes from this permit.

While home development may be progressing at the rate of five homes per year, it appears that appropriation under this permit has lagged behind that trend. From issuance of the permit in 1968 until 2005, Petitioner was increasing diversion rates under the permit by an average of 0.0018 cfs per year. By comparison, in the past ten years (1995 to 2005), diversions were increasing by only an average of 0.0017 cfs per year. According to Petitioner, appropriation will be capped at 58 gallons per minute, or 0.1292 cfs. (Petition, p. 12.) If historical rates of development continue, as Petitioner suggests they will, this rate of diversion will not be reached until at least 2039, well past the date of the requested extension, or even the extended date of 2018 that Petitioner requests in the petition for reconsideration. This date is in line with the estimates in the Mitigated Negative Declaration. (Mitigated Negative Declaration, pp. 5, 17.) A mere showing that some increase in water use will occur over a long period of time does not amount to a satisfactory showing that the water will be put to beneficial use in accordance with the permit.

The evidence presented by the Petitioner, including arguments made in the petition for reconsideration, do not convince the State Water Board that satisfactory progress will be made if an extension of time is granted. This finding is only underscored by the fact that we are now well past the 2007 date when the extension would have expired, and even Petitioner estimates that the project is still more than ten years from full beneficial use of the water.

Thus, Petitioner has not made any part of the showing necessary to support an extension of time. Petitioner has not demonstrated that due diligence has been exercised, has not demonstrated that failure to comply with previous time requirements was caused by obstacles

that could not reasonably be avoided, and has not shown that satisfactory progress will be made if an extension is granted.³ The Division's action was appropriate and proper.

5.0 REQUEST FOR HEARING

Petitioner offers new evidence that Petitioner claims could not, in the exercise of reasonable diligence, have been produced earlier. Petitioner offers this evidence as part of a challenge to paragraph 21 of the denial order, regarding threatened and endangered species. This new evidence suggests that some concerns over certain species may not be as significant as previously thought.

The Division may condition or deny a petition for extension of time based on environmental or public trust impacts, including impacts on threatened and endangered species. (See Wat. Code, § 1398 [the State Water Board "may" grant an extension for good cause]; Cal. Code Regs., tit. 23, § 844 [An extension will be granted only on those conditions that the State Water Board determines to be in the public interest.]) But the absence of any impacts on threatened and endangered species, or evidence that those impacts will not be as serious as anticipated by the Division, cannot support the issuance of an extension if other requirements for approving an extension have not been satisfied. Because the Petitioner has not made the showing necessary to support issuance of an extension, as discussed in Section 4 of this order, there is no reason to hold a hearing to hear evidence concerning impacts on threatened and endangered species.

A hearing was also requested to present new evidence on how litigation related to the development project, but related to a different water permit, impacted Petitioner financially and slowed development. As discussed above, lack of finances, including lack of finances resulting from litigation, does not constitute a valid excuse for delay. As such, there is not a reason to hold a hearing to hear evidence concerning this matter, as such evidence could not affect the outcome of this reconsideration.

³ The Division denied the Petitioner's request for a ten-year extension. The Petitioner's petition for reconsideration requests an additional ten-year extension, for a total of twenty years. Because this order concludes that the requirements for issuing an extension have not been satisfied for either period, it is unnecessary to address the issue whether the State Water Board could grant an extension for more than ten years without first providing notice and an opportunity to protest the longer extension. (See Cal. Code Regs., tit. 23, § 843.)

6.0 CONCLUSION

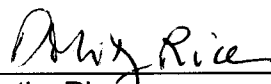
Upon review of the record, the State Water Board finds that the Division's order canceling the application was appropriate and proper.

ORDER

IT IS HEREBY ORDERED that the Irish Beach Water District petition for reconsideration is denied.

MAR 04 2009

Dated: _____



Dorothy Rice
Executive Director

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Permit 15580 (Application 21902)
Irish Beach Water District

ORDER DENYING PETITION FOR EXTENSION OF TIME

SOURCE: Irish Gulch tributary to Pacific Ocean
COUNTY: Mendocino

WHEREAS:

1. The State Water Resources Control Board (State Water Board), Division of Water Rights (Division) issued Permit 15580 to Gertrude J. Moores, Jesse E. Nichols and Estate of William M. Moores (Permittees) on February 15, 1968, pursuant to Application 21902. On March 20, 1969, the permit was amended to list Irish Beach Water District (District) as another Permittee. The permit was subsequently assigned solely to the District on March 21, 1973. The permit authorizes direct diversion of 1.31 cubic feet per second (cfs) for municipal, domestic and irrigation purposes.
2. The permit required that (a) construction work be completed December 1, 1970 and (b) that the water be applied to the authorized use by December 1, 1971.
3. Permittee requested and on July 27, 1973 the Division granted, an extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1975, and that water be fully used by December 1, 1976. The Order established a maximum annual diversion limit of 545 acre-feet (af).
4. On October 17, 1975, Permittee filed a petition to add a new point of diversion and another source to Permit 15580.
5. The Division inspected the project on June 29, 1976 and found that the District was using one fixed and one moveable point of diversion to divert water from Irish Gulch. The flow at the upper Irish Gulch point of diversion was estimated at 30 gallons per minute (gpm).
6. Permittee requested, and on September 25, 1978 the Division granted, a second extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1978, and that water be fully used by December 1, 1987. The petition to add a second point of diversion on an Unnamed Stream tributary to Irish Gulch was also approved in the 1978 Order.

7. On October 17, 1988, the Division inspected the project and found that five homes per year were built during the last time extension period. A total of 110 homes had been built. The flow of Irish Gulch was measured at 40 gpm (0.09 cfs). The Permittee was using 0.05 cfs, with a maximum annual use of 23 af. There was no irrigation use.
8. Permittee requested, and on May 9, 1989 the Division granted, a third extension of time to commence or complete construction work or apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1995, and that water be fully used by December 31, 1997.
9. On June 25, 1991, the Division issued an Order Correcting Source to Irish Gulch, not the Unnamed Stream. Pursuant to the Order, the Permittee was authorized to divert at two locations on Irish Gulch. The two points of diversion are roughly a mile apart. Irrigation use was deleted from the permit.
10. The Division conducted a licensing inspection on May 25, 1999 and found that 167 homes had been built out of the planned 450 homes. Of the 167 homes, 60 were full time residences, 60 were vacation rentals and part time residents occupied the remaining homes. The community continued to grow at a rate of five homes per year.

The gravity feed pipe on the upper point of diversion had a calculated delivery rate of 0.26 cfs. The water treatment plant, which all water is diverted through, has a design capacity of 50 gpm (0.11 cfs). The limiting factor, however, was the reported use on a monthly basis. Progress reports indicate maximum monthly use to be 920,000 gallons in July of 1994 and 1995, which converts to 0.05 cfs. The maximum annual diversion was 24.1 af.

The flow at the time of inspection was 0.6 cfs over the weir on a dam just upstream of the lower point of diversion. The upper diversion is formed by a diversion drain at the bottom of the upstream side of an instream weir. The drain feeds into a sump next to the stream. The 3-inch steel line gravity-feeds water to a 10,000-gallon sedimentation tank, and then continues on to a larger storage tank and the water treatment plant. At the lower diversion location, a portable pump is used to feed water through a 1½-inch diameter pipe to the treatment plant.

11. On July 28, 2000, two and a half years after their permit expired, Permittee filed a petition for a fourth extension of time within which to commence or complete construction work or apply water to beneficial use. The petition fees were paid. The petition stated that 170 homes had been developed. The District requested a ten-year extension of time, but also indicated that it was unknown when water would be fully used. The Permittee indicated that it has no control over the rate of development of new homes. Water use was stated to be 0.066 cfs in 1999.
12. Public notice of the request for an extension of time was issued on January 18, 2002 and no protests were received.
13. The Permittee is lead agency pursuant to the California Environmental Quality Act (CEQA). On October 20, 2004, Division staff requested information on the type of CEQA document that the Permittee planned to prepare and asked for information stating the planned (a) date of preparation of the Initial Study, (b) date of circulation for the draft CEQA document and (c) target date for completion of the CEQA document. A response was requested by November 19, 2004.

14. The Permittee's December 21, 2004 response stated that the District did not know the type of CEQA document that it would prepare, nor could it identify the date for preparation of the CEQA document.
15. On January 21, 2005, Division staff renewed the request for information on the type of CEQA document that the Permittee planned to prepare and asked for information stating the planned (a) date of preparation of the Initial Study, (b) date of circulation for the draft CEQA document and (c) target date for completion of the CEQA document. A response was requested by March 22, 2005. The requested information was not received.
16. On February 24, 2006, Division staff requested submittal of a CEQA document by March 26, 2006 and advised that the petition would be canceled pursuant to Water Code section 1701.4 if the requested information was not timely received.
17. On March 8, 2006, Steve Whitaker called on behalf of the Permittee and advised that the Permittee did not take any action a year ago when it received the Division's January 21, 2005 letter regarding preparing a CEQA document for the time extension petition. The Permittee would work on a CEQA document right away.
18. On October 13, 2006, the Permittee's CEQA consultant advised Division staff that she had not yet completed a CEQA document. Division staff advised that the CEQA document needed to be completed as soon as possible because the requested ten-year time extension period was ending and there was no document for the extension.
19. The time to complete beneficial use under the permit ended in 1997. The Permittee did not circulate an environmental document for the time extension petition until 2007, at nearly the end of the requested extension period. On January 22, 2007, the Permittee circulated a Notice of Preparation of a Draft Mitigated Negative Declaration (MND) (SCH # 2007012087). The document states that at full build out, the subdivision requires 0.292 cfs. (MND, p. 4.) Build out is estimated at sometime after 2038 and might occur by 2067. (MND, pp. 5, 17.)

The estimated Irish Gulch seasonal low flow minimum at the upper point of diversion was 0.05 cfs as measured by the State Department of Health Services on November 5, 2002. (MND, p. 19.) The estimated minimum flow at the lower point of diversion is 0.08 cfs (converted from gpm to cfs). (MND, p. 38.) From 2002 through 2005, the peak summer demand for the subdivision was 0.087 cfs.

The Permittee continually diverts water at the upper Irish Gulch point of diversion. Under existing conditions, Irish Gulch goes intermittently dry during the summer. (MND, p. 30.) When the upper Irish Gulch point of diversion goes dry, the lower diversion facility is used. (MND, page 31.) The Permittee predicts that in eight years of continued development (i.e., by 2015), increases in water volumes diverted will use all of the Irish Gulch water supply. (MND, p. 36.) The MND concludes that there will be insufficient water for the subdivision, even if the entire stream flow is utilized. (MND, page 39.)

On March 15, 2007, the Permittee issued a Notice of Determination (NOD), which incorporates the following mitigation measures (the entire text of the mitigation measures is not listed herein).

Mitigation A: This mitigation measure is for Mallo Pass Creek Permit 16622 and is not related to Permit 15580.

Mitigation B: Limit cumulative diverted volume to 56.7 af at the upper point of diversion and 40.8 af at the lower point of diversion on Irish Gulch.

Mitigation C: Limit use of the upper diversion on Irish Gulch to winter and spring. Use the lower diversion as flows recede in early summer.

Mitigation D: Implement water conservation to reduce diversions.

Mitigation E: The cement weirs across the stream that are used to divert water form a barrier to anadromous steelhead migration. Install a removable spillway in the weirs by cutting a channel through the cement on the weir, which could be blocked by a removable barrier during low flows.

Mitigation F: This mitigation measure is solely related to Mallo Pass Creek Permit 16622 and is not related to Permit 15580.

Mitigation G: The Division's standard cultural resource term.

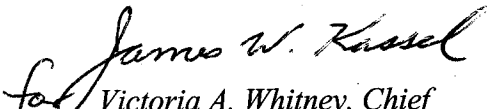
Permit 15580 does not have a bypass flow requirement for public trust resources and the MND does not propose any bypass flows.

20. The State Water Board will grant an extension of time within which to commence or complete construction work or apply water to beneficial use only upon such conditions determined to be in the public interest. The Permittee's upper and lower diversions are located roughly one mile apart. During the summer months, the Permittee documents that the upper point of diversion is dewatered and also documents that further development will dewater the stream at the lower diversion by 2015. There is about one-third mile of stream downstream of the lower point of diversion. Thus, continued development would dewater a one and a third-mile stream reach out of a total estimated stream length of two and a third miles. (MND, p. 8.) The data shows that the Permittee is already experiencing problems with lack of flow, because peak month water production in 2005 was less than in any of the other recorded years from 1993 through 2005 (2.5 af produced in 2005 as compared to 4.2 af in both 1997 and 1999). (MND, p. 18.) Consequently, it appears that the Permittee's diversions during the requested time extension period may have dewatered about one and a third miles of the stream.
21. Approval of the time extension petition is not in the public interest because it is inconsistent with the State Water Board's public trust duties due to potential harm to threatened and endangered species. There are four threatened or endangered species dependent on maintenance of habitat within Irish Gulch: (a) the threatened California red-legged frog (*Rana aurora draytonii*), (b) the endangered Point Arena Mountain Beaver (*Aplodonti rufa nigra*), (c) threatened steelhead (*Oncorhynchus mykiss*) and (d) endangered Coho salmon. (MND, pp. 41 & 49; NOAA Fisheries critical habitat designation.)
22. The State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use upon a showing of good cause. (Wat. Code, § 1398.) Permittee must show that (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.

23. Permittee has not shown that due diligence has been exercised. The Permittee has not completed development, despite having had the opportunity to pursue development of the project from 1969 through 1997. Only five homes per year have been built in the place of use. The Permittee did not timely complete a CEQA document for the petition.
24. Permittee has not shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. The Permittee has not completed development, despite having had the opportunity to pursue development of the project from 1969 through 1997. The listed reason for failing to fully develop the project is the slow rate of development of the lots. Only five lots per year are developed.
25. Permittee has not shown that satisfactory progress will be made if a time extension is granted. The Permittee requested a ten-year extension of time, from 1997 through 2007 but will not be able to complete the project during the requested extension. The Permittee estimates that full beneficial use will not occur until sometime between 2038 and 2067. Permittee was previously granted three time extensions and has yet to complete the project, and has not shown any change in circumstances that could facilitate action toward completion of the project. Moreover, the MND documents that there is insufficient summer flow in Irish Gulch to complete the project.
26. Permittee has not shown good cause for the time extension.
27. The State Water Board has delegated the authority to act on requests for an extension of time to the Deputy Director for Water Rights pursuant to Resolution No. 2007-0057. (Attachment to Resolution No. 2007-0057, section 4.2.7) The Deputy Director has re-delegated this authority to the Assistant Deputy Director.
28. The project shall be inspected for license.

NOW, THEREFORE, IT IS ORDERED THAT THE STATE WATER BOARD, DIVISION OF WATER RIGHTS, HEREBY DENIES THE PETITION FOR EXTENSION OF TIME.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney, Chief
Division of Water Rights

Dated: **JUL 22 2008**

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 21902

PERMIT 15580

LICENSE _____

ORDER TO DELETE POINT OF DIVERSION, CORRECT DESCRIPTION OF SOURCE AND MOVEABLE POINT OF DIVERSION AND PURPOSE OF USE

WHEREAS:

1. Permit 15580 was issued to Gertrude J. Moores, Jesse E. Nichols, and Estate of William M. Moores, on February 15, 1968 pursuant to Application 21902.
2. Permit 15580 was subsequently assigned to Irish Beach Water District.
3. A request to delete Point of Diversion No. 3 on unnamed stream, correct description of source, point of diversion (lower limit) and purpose of use has been filed with the State Water Resources Control Board and said Board has determined that good cause of such corrections exist.
4. The Board has determined that said corrections will not initiate a new right nor operate to the injury of any other lawful user of water and that good and sufficient cause has been shown for said corrections.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 1 of this permit regarding the description of the source be corrected to read as follows:

Irish Gulch tributary to Pacific Ocean

(0000001)

2. Condition 2 of this permit be amended to read:

(1) South 1400 and West 200 feet from NE corner of Section 6, T13N, R16W, MDB&M, being within SE $\frac{1}{4}$ of NE $\frac{1}{4}$ of said Section 6. Also described as California Coordinate System, Zone 2, N 498,100 and E 1,526,350.

(2) The moveable point of diversion (upper limit) is located due South 1,300 feet from the NE corner of Section 6, T13N, R16W, MDB&M, being within the NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 6, also described as California Coordinate System, Zone 2, N 498,250 and E 1,526,550. The permanent point of diversion (lower limit) is located South 2,150 feet and East 1,450 feet from NW corner of Section 6, T13N, R16W, MDB&M, being within the SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of said Section 6, also described as California Coordinate System, Zone 2, N497,500 and E 1,522,750. (0000002)

3. Condition 4 of this permit regarding the purpose of use be corrected to read as follows:

Domestic and Municipal

(0000004)

Dated: **JUNE 25 1991**

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

APPLICATION 21902

PERMIT 15580

LICENSE _____

**ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,
AND AMENDING THE PERMIT**

WHEREAS:

1. Permit 15580 was issued to Gertrude J. Moores, Jesse E. Nichols, and Estate of William M. Moores, c/o Timothy W. O'Brien on February 15, 1968 pursuant to Application 21902.
2. Permit 15580 was subsequently assigned to Irish Beach Water District and Jessie E. Nichols.
3. A petition for an extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
4. The permittee has proceeded with diligence and good cause has been shown for the extension of time.
5. Permit Condition 10 pertaining to the continuing authority of the Board should be updated to conform to Section 780(a), Title 23 of the California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 7A of the permit be amended to read:

CONSTRUCTION WORK SHALL BE
COMPLETED ON OR BEFORE

December 31, 1995

(0000008)

2. Condition 8A of the permit be amended to read:

COMPLETE APPLICATION OF THE
WATER TO THE PROPOSED USE
SHALL BE MADE ON OR BEFORE

December 31, 1997

(0000009)

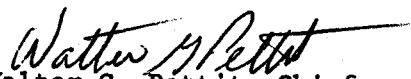
Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated: **MAY** 09 1989


Walter G. Pettit, Chief
Division of Water Rights

STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

ORDER

APPLICATION 21902

PERMIT 15580

LICENSE _____

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,
APPROVING CHANGES AND AMENDING PERMIT

WHEREAS:

1. PERMITTEE HAS PETITIONED FOR:
 - A. AN EXTENSION OF TIME WITHIN WHICH TO COMPLETE DEVELOPMENT OF THE PROJECT AND TO APPLY THE WATER TO BENEFICIAL USE.
 - B. CHANGES IN THE POINT OF DIVERSION AND NAME OF SOURCE.
2. THE BOARD HAS DETERMINED THAT:
 - A. PERMITTEE HAS PROCEEDED WITH DILIGENCE AND HAS SHOWN GOOD CAUSE FOR AN EXTENSION OF TIME.
 - B. GOOD CAUSE EXISTS FOR THE PETITIONED CHANGES AND THAT SAID CHANGES WILL NOT OPERATE TO THE INJURY OF ANY OTHER LEGAL USER OF WATER.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A NEW DEVELOPMENT SCHEDULE IS APPROVED AS FOLLOWS:

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1978

APPLICATION OF THE WATER TO THE PROPOSED USE SHALL BE
COMPLETED ON OR BEFORE DECEMBER 1, 1987

2. PERMISSION IS HEREBY GRANTED UNDER PERMIT 15580 TO CHANGE:

A. THE POINT OF DIVERSION TO POINTS OF DIVERSION DESCRIBED AS FOLLOWS:

- (1) SOUTH 1,400 FEET AND WEST 200 FEET FROM NE CORNER OF SECTION 6, T13N, R16W, MDB&M, BEING WITHIN SE1/4 OF NE1/4 OF SAID SECTION 6,
- (2) MOVABLE POINTS OF DIVERSION (THREE) BETWEEN SOUTH 1,300 FEET FROM NE CORNER OF SECTION 6, T13N, R16W, MDB&M, BEING WITHIN NE1/4 OF NE1/4 OF SAID SECTION 6, AND SOUTH 2,150 FEET AND EAST 1,650 FEET FROM NW CORNER OF SECTION 6, T13N, R16W, MDB&M, BEING WITHIN SE1/4 OF NW1/4 OF SAID SECTION 6, AND
- (3) SOUTH 3,100 FEET AND WEST 2,500 FEET FROM NE CORNER OF SECTION 6, T13N, R16W, MDB&M, BEING WITHIN NW1/4 OF SE1/4 OF SAID SECTION 6.

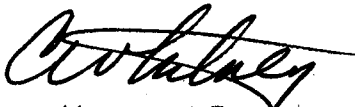
B. THE NAME OF SOURCES TO NAMES OF SOURCES AS FOLLOWS:

- (1) IRISH GULCH TRIBUTARY TO PACIFIC OCEAN
- (2) UNNAMED STREAM TRIBUTARY TO IRISH GULCH

3. PARAGRAPH 10 OF THE PERMIT BE AMENDED TO READ AS FOLLOWS:

PURSUANT TO CALIFORNIA WATER CODE SECTION 100, ALL RIGHTS AND PRIVILEGES UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO, INCLUDING METHOD OF DIVERSION, METHOD OF USE, AND QUANTITY OF WATER DIVERTED, ARE SUBJECT TO THE CONTINUING AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD IN ACCORDANCE WITH LAW AND IN THE INTEREST OF THE PUBLIC WELFARE TO PREVENT WASTE, UNREASONABLE USE, UNREASONABLE METHOD OF USE, OR UNREASONABLE METHOD OF DIVERSION OF SAID WATER.

THIS CONTINUING AUTHORITY OF THE BOARD MAY BE EXERCISED BY IMPOSING SPECIFIC REQUIREMENTS OVER AND ABOVE THOSE CONTAINED IN THIS PERMIT WITH A VIEW TO MINIMIZING WASTE OF WATER AND TO MEETING THE REASONABLE WATER REQUIREMENTS OF PERMITTEE WITHOUT UNREASONABLE DRAFT ON THE SOURCE. PERMITTEE MAY BE REQUIRED TO IMPLEMENT SUCH PROGRAMS AS (1) REUSING OR RECLAIMING THE WATER ALLOCATED; (2) RESTRICTING DIVERSIONS SO AS TO ELIMINATE AGRICULTURAL TAILWATER OR TO REDUCE RETURN FLOW; (3) SUPPRESSING EVAPORATION LOSSES FROM WATER SURFACES; (4) CONTROLLING PHREATOPHYTIC GROWTH; AND (5) INSTALLING, MAINTAINING, AND OPERATING EFFICIENT WATER MEASURING DEVICES TO ASSURE COMPLIANCE WITH THE QUANTITY LIMITATIONS OF THIS PERMIT AND TO DETERMINE ACCURATELY WATER USE AS AGAINST REASONABLE WATER REQUIREMENTS FOR THE AUTHORIZED PROJECT. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD DETERMINES, AFTER NOTICE TO AFFECTED PARTIES AND OPPORTUNITY FOR HEARING, THAT SUCH SPECIFIC REQUIREMENTS ARE PHYSICALLY AND FINANCIALLY FEASIBLE AND ARE APPROPRIATE TO THE PARTICULAR SITUATION.



CLINT WHITNEY, EXECUTIVE DIRECTOR
WATER RIGHTS AND ADMINISTRATION

DATED: SEPTEMBER 25 1978

STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ROOM 1015, RESOURCES BUILDING

1416 NINTH STREET • SACRAMENTO 95814



ORDER APPROVING A NEW DEVELOPMENT SCHEDULE
AND
AMENDING PERMIT

PERMIT 15580

APPLICATION 21902

WHEREAS:

1. A PETITION FOR EXTENSION OF TIME WITHIN WHICH TO DEVELOP THE PROJECT AND APPLY THE WATER TO THE PROPOSED USE HAS BEEN FILED WITH THE STATE WATER RESOURCES CONTROL BOARD.
2. IT APPEARS THAT THE PERMITTEE HAS PROCEEDED WITH DILIGENCE AND THAT GOOD CAUSE HAS BEEN SHOWN FOR EXTENSION OF TIME.
3. THE STATE WATER RESOURCES CONTROL BOARD HAS DULY AUTHORIZED THE CHIEF, DIVISION OF WATER RIGHTS TO SIGN THIS ORDER.

NOW, THEREFORE, IT IS ORDERED THAT:

1. A NEW DEVELOPMENT SCHEDULE BE, AND IS HEREBY, APPROVED AS FOLLOWS:

CONSTRUCTION WORK SHALL BE COMPLETED ON OR BEFORE DECEMBER 1, 1975

APPLICATION OF THE WATER TO THE PROPOSED USE SHALL
BE COMPLETED ON OR BEFORE DECEMBER 1, 1976

2. THE TOTAL ANNUAL DIVERSION AND USE ALLOWED UNDER SAID PERMIT 15580 BE LIMITED TO 545 ACRE-FEET.

3. PARAGRAPH 10 OF THE PERMIT BE AMENDED TO READ AS FOLLOWS: ALL RIGHTS AND PRIVILEGES UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO, INCLUDING METHOD OF DIVERSION, METHOD OF USE, AND QUANTITY OF WATER DIVERTED, ARE SUBJECT TO THE CONTINUING AUTHORITY OF THE STATE WATER RESOURCES CONTROL BOARD IN ACCORDANCE WITH LAW AND IN THE INTEREST OF THE PUBLIC WELFARE TO PREVENT WASTE, UNREASONABLE USE, UNREASONABLE METHOD OF USE, OR UNREASONABLE METHOD OF DIVERSION OF SAID WATER.

THIS CONTINUING AUTHORITY OF THE BOARD MAY BE EXERCISED BY IMPOSING SPECIFIC REQUIREMENTS OVER AND ABOVE THOSE CONTAINED IN THIS PERMIT WITH A VIEW TO MINIMIZING WASTE OF WATER AND TO MEETING THE REASONABLE WATER REQUIREMENTS OF PERMITTEE WITHOUT UNREASONABLE DRAFT ON THE SOURCE. PERMITTEE MAY BE REQUIRED TO IMPLEMENT SUCH PROGRAMS AS (1) REUSING OR RECLAIMING THE WATER ALLOCATED; (2) RESTRICTING DIVERSIONS SO AS TO ELIMINATE AGRICULTURAL TAILWATER OR TO

REDUCE RETURN FLOW; (3) SUPPRESSING EVAPORATION LOSSES FROM WATER SURFACES; (4) CONTROLLING PHREATOPHYTIC GROWTH; AND (5) INSTALLING, MAINTAINING, AND OPERATING EFFICIENT WATER MEASURING DEVICES TO ASSURE COMPLIANCE WITH THE QUANTITY LIMITATIONS OF THIS PERMIT AND TO DETERMINE ACCURATELY WATER USE AS AGAINST REASONABLE WATER REQUIREMENTS FOR THE AUTHORIZED PROJECT. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD DETERMINES, AFTER NOTICE TO AFFECTED PARTIES AND OPPORTUNITY FOR HEARING, THAT SUCH SPECIFIC REQUIREMENTS ARE PHYSICALLY AND FINANCIALLY FEASIBLE AND ARE APPROPRIATE TO THE PARTICULAR SITUATION.

4. THE QUANTITY OF WATER DIVERTED UNDER THIS PERMIT AND UNDER ANY LICENSE ISSUED PURSUANT THERETO IS SUBJECT TO MODIFICATION BY THE STATE WATER RESOURCES CONTROL BOARD, IF, AFTER NOTICE TO THE PERMITTEE AND AN OPPORTUNITY FOR HEARING, THE BOARD FINDS THAT SUCH MODIFICATION IS NECESSARY TO MEET WATER QUALITY OBJECTIVES IN WATER QUALITY CONTROL PLANS WHICH HAVE BEEN OR HEREAFTER MAY BE ESTABLISHED OR MODIFIED PURSUANT TO DIVISION 7 OF THE WATER CODE. NO ACTION WILL BE TAKEN PURSUANT TO THIS PARAGRAPH UNLESS THE BOARD FINDS THAT (1) ADEQUATE WASTE DISCHARGE REQUIREMENTS HAVE BEEN PRESCRIBED AND ARE IN EFFECT WITH RESPECT TO ALL WASTE DISCHARGES WHICH HAVE ANY SUBSTANTIAL EFFECT UPON WATER QUALITY IN THE AREA INVOLVED, AND (2) THE WATER QUALITY OBJECTIVES CANNOT BE ACHIEVED SOLELY THROUGH THE CONTROL OF WASTE DISCHARGES.

(000 0013)

DATED: JUL 27 1973

K. L. Woodward
K. L. WOODWARD, CHIEF
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT NO. 15580

Notice of Change (Over)

Application 21902 of Gertrude J. Moores, Jesse E. Nichols, and Estate of

William M. Moores, c/o Timothy W. O'Brien, P. O. Box 725, Ukiah, California 95482

filed on September 14, 1964, has been approved by the State Water Resources Control Board
SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Name of source(s):

Tributary to:

- | | |
|------------------------|--------------------------|
| (a) <u>Irish Gulch</u> | (a) <u>Pacific Ocean</u> |
| (b) _____ | (b) _____ |
| (c) _____ | (c) _____ |
| (d) _____ | (d) _____ |
| (e) _____ | (e) _____ |

2. Location of point(s) of diversion:

Bearing and distance or coordinate distances from section corner or quarter-section corner	40-acre subdivision of public land survey or projection thereof	Section	Town- ship	Range	Base and Meridian
(a) <u>S 1,400' and W 200' from NE corner of Section 6</u>	<u>SE 1/4 of NE 1/4</u>	<u>6</u>	<u>13N</u>	<u>16W</u>	<u>MD</u>
(b) <u>Movable Points of Diversion (3)</u>	<u>1/4 of 1/4</u>				
(c) <u>Between</u>					
(c) <u>S 1,300' from NE corner of Section 6</u>	<u>NE 1/4 of NE 1/4</u>	<u>6</u>	<u>13N</u>	<u>16W</u>	<u>MD</u>
(d) <u>and</u>					
(d) <u>S 2,150' and E 1,650' from NW corner of</u>	<u>SE 1/4 of NW 1/4</u>	<u>6</u>	<u>13N</u>	<u>16W</u>	<u>MD</u>
(e) <u>Section 6</u>	<u>1/4 of 1/4</u>				

County of Mendocino

3. Place of use: Domestic and municipal use in S $\frac{1}{2}$ of NE $\frac{1}{4}$, SE $\frac{1}{4}$, SW $\frac{1}{4}$, and NW $\frac{1}{4}$ of Section 6, T13N, R16W; E $\frac{1}{2}$ of NE $\frac{1}{4}$, E $\frac{1}{2}$ of SE $\frac{1}{4}$, and NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 1, T13N, R17W; SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 31, T14N, R16W; and SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T14N, R17W. Irrigation of 138 acres with 20 acres in NE $\frac{1}{4}$ of SW $\frac{1}{4}$, 10 acres in SE $\frac{1}{4}$ of SW $\frac{1}{4}$, 15 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$, 15 acres in NW $\frac{1}{4}$ of SW $\frac{1}{4}$, 22 acres in NE $\frac{1}{4}$ of NW $\frac{1}{4}$, and 26 acres in NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 6, T13N, R16W; 5 acres in NE $\frac{1}{4}$ of SE $\frac{1}{4}$, 5 acres in SE $\frac{1}{4}$ of SE $\frac{1}{4}$, and 3 acres in NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 1, T13N, R17W; 12 acres in SW $\frac{1}{4}$ of SW $\frac{1}{4}$ of Section 31, T14N, R16W; and 5 acres in SE $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 36, T14N, R17W, MDB&M, as shown on map on file with the State Water Resources Control Board.

4. Purpose(s) of use: _____

the provisions of this division (of the Water Code).
 any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under
 condemnation proceedings or otherwise, by the State or any city, county, municipal water district, irrigation district, lighting district, or
 acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through
 competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or
 the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any
 amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of
 Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual
 and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article
 conformity with this division (of the Water Code), but no longer.

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

1. Permittee shall allow representatives of the State Water Resources Control Board and other parties, as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit. (vvv c v i i)
12. Upon a judicial determination that the place of use under this permit or a portion thereof is entitled to the use of water by riparian right, the right so determined and the right acquired under this permit shall not result in a combined right to the use of water in excess of that which could be claimed under the larger of the two rights. (vvv c v i i)
13. This permit and all rights acquired or to be acquired thereunder shall be subject to and limited by the agreement entered into between Jesse E. Nichols and William M. Moores and Gertrude J. Moores, a copy of which is on file with the State Water Resources Control Board. The State Water Resources Control Board does not assume jurisdiction to enforce said agreement. (045-0300)
10. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water. (vvv c v i i) amended
9. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Resources Control Board until license is issued. (vvv c v i i)
8. Complete application of the water to the proposed use shall be made on or before December 1, 1971. (vvv c v i i)
7. Said construction work shall be completed on or before December 1, 1970. (vvv c v i i)
6. The maximum quantity herein stated may be reduced in the license if investigation warrants. (vvv c v i i)

Actual construction work shall begin on or before _____ and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted this permit may be revoked.

P15580.

Partial
3-6-69 RECEIVED NOTICE OF ASSIGNMENT TO
to Grand Beach Water District
3-9-73 Received and approved - Grand Beach Water District
of David E. Nichols as receiver
12/28/87 assigned to Irish Beach Water Dist.